

§ 103.34

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any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section.

[T.D. 86–196, 51 FR 40792, Nov. 10, 1986. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996]

§ 103.34 Sanctions for improper actions by Customs officers or employees.

(a) The improper disclosure of the confidential information contained in Customs documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a Customs officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from the United States Customs Service, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Sanctions for improper denials of information by Customs officers or employees are set forth in § 103.9(c).

[T.D. 81–168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996]

§ 103.35 Confidential commercial information; exempt.

(a) *In general.* For purposes of this section, “commercial information” is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act (FOIA) request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written no-

tice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter’s commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter’s claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given—(1) Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the